

House Engrossed

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**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 113

HOUSE BILL 2814

AN ACT

AMENDING SECTIONS 32-2114, 32-2115 AND 32-2183, ARIZONA REVISED STATUTES;
AMENDING TITLE 32, CHAPTER 20, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING
SECTION 32-2183.06; RELATING TO RESTRICTED AIR SPACE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-2114, Arizona Revised Statutes, is amended to
3 read:

4 32-2114. Recorded disclosure for land under a military training
5 route or restricted air space

6 A. The commissioner shall execute and record in the office of the
7 county recorder in each county in this state that includes land under a
8 military training route as defined in section 28-8461 and as delineated in
9 the military training route map prepared by the state land department
10 pursuant to section 37-102 a document, applicable to land under a military
11 training route as delineated in the military training route map, disclosing
12 that the land is under a military training route.

13 B. THE COMMISSIONER SHALL EXECUTE AND RECORD IN THE OFFICE OF THE
14 COUNTY RECORDER IN EACH COUNTY IN THIS STATE THAT INCLUDES LAND UNDER
15 RESTRICTED AIR SPACE AS DELINEATED IN THE RESTRICTED AIR SPACE MAP PREPARED
16 BY THE STATE LAND DEPARTMENT PURSUANT TO SECTION 37-102 A DOCUMENT,
17 APPLICABLE TO LAND UNDER RESTRICTED AIR SPACE AS DELINEATED IN THE RESTRICTED
18 AIR SPACE MAP, DISCLOSING THAT THE LAND IS UNDER RESTRICTED AIR SPACE.

19 ~~B.~~ C. If a military training route changes and people who were
20 notified pursuant to subsection A of this section no longer have property
21 under a military training route as delineated in the military training route
22 map, the commissioner shall execute and record in the office of the county
23 recorder in the county in which the property is located a document disclosing
24 that the land is not under a military training route.

25 D. IF RESTRICTED AIR SPACE CHANGES AND PEOPLE WHO WERE NOTIFIED
26 PURSUANT TO SUBSECTION B OF THIS SECTION NO LONGER HAVE PROPERTY UNDER
27 RESTRICTED AIR SPACE AS DELINEATED IN THE RESTRICTED AIR SPACE MAP, THE
28 COMMISSIONER SHALL EXECUTE AND RECORD IN THE OFFICE OF THE COUNTY RECORDER IN
29 THE COUNTY IN WHICH THE PROPERTY IS LOCATED A DOCUMENT DISCLOSING THAT THE
30 LAND IS NOT UNDER RESTRICTED AIR SPACE.

31 ~~C.~~ E. The attorney general shall prepare in recordable form the
32 documents that are executed and recorded by the commissioner pursuant to this
33 section.

34 ~~D.~~ F. The documents that are executed and recorded by the
35 commissioner pursuant to this section shall include a legal description of
36 the military training route as delineated in the military training route map
37 AND A LEGAL DESCRIPTION OF THE RESTRICTED AIR SPACE AS DELINEATED IN THE
38 RESTRICTED AIR SPACE MAP.

39 Sec. 2. Section 32-2115, Arizona Revised Statutes, is amended to read:

40 32-2115. Department's web site; military training route map;
41 restricted air space map

42 The department shall post on its web site the military training route
43 map AND THE RESTRICTED AIR SPACE MAP prepared by the state land department
44 pursuant to section 37-102.

1 Sec. 3. Section 32-2183, Arizona Revised Statutes, is amended to read:

2 32-2183. Subdivision public reports; denial of issuance;
3 unlawful sales; voidable sale or lease; order
4 prohibiting sale or lease; investigations; hearings;
5 summary orders

6 A. Upon examination of a subdivision, the commissioner, unless there
7 are grounds for denial, shall issue to the subdivider a public report
8 authorizing the sale or lease in this state of the lots, parcels or
9 fractional interests within the subdivision. The report shall contain the
10 data obtained in accordance with section 32-2181 and any other information
11 which the commissioner determines is necessary to implement the purposes of
12 this article. If any of the lots, parcels or fractional interests within the
13 subdivision are located within territory in the vicinity of a military
14 airport or ancillary military facility as defined in section 28-8461, ~~or~~
15 under a military training route as delineated in the military training route
16 map prepared pursuant to section 37-102 OR UNDER RESTRICTED AIR SPACE AS
17 DELINEATED IN THE RESTRICTED AIR SPACE MAP PREPARED PURSUANT TO SECTION
18 37-102, the report shall include, in bold twelve point font block letters on
19 the first page of the report, the statements required pursuant to section
20 28-8484, subsection A, ~~or~~ section 32-2183.05 OR SECTION 32-2183.06 and, if
21 the department has been provided a map prepared pursuant to section 28-8484,
22 subsection B, ~~or~~ section 37-102, the report shall include a copy of the map.
23 The military airport report requirements do not require the amendment or
24 reissuance of any public report issued on or before December 31, 2001 or on
25 or before December 31 of the year in which the lots, parcels or fractional
26 interests within a subdivision become territory in the vicinity of a military
27 airport or ancillary military facility. The military training route report
28 requirements do not require the amendment or reissuance of any public report
29 issued on or before December 31, 2004. THE RESTRICTED AIR SPACE REPORT
30 REQUIREMENTS DO NOT REQUIRE THE AMENDMENT OR REISSUANCE OF ANY PUBLIC REPORT
31 ISSUED ON OR BEFORE DECEMBER 31, 2006. The commissioner shall require the
32 subdivider to reproduce the report, make the report available to each
33 prospective customer and furnish each buyer or lessee with a copy before the
34 buyer or lessee signs any offer to purchase or lease, taking a receipt
35 therefor.

36 B. Notwithstanding subsection A of this section, a subdivider may
37 elect to prepare a final public report for use in the sale of improved lots
38 as defined in section 32-2101, as follows:

39 1. The subdivider shall prepare the public report and provide a copy
40 of the report to the commissioner with the submission of the notification
41 required by sections 32-2181 and 32-2184 and shall comply with all other
42 requirements of this article.

43 2. An initial filing fee of five hundred dollars or an amended filing
44 fee of two hundred fifty dollars shall accompany the notification required by
45 paragraph 1 of this subsection.

1 3. The department shall assign a registration number to each
2 notification and public report submitted pursuant to this subsection and
3 shall maintain a database of all of these submissions. The subdivider shall
4 place the number on each public report.

5 4. The department shall determine within fifteen business days after
6 the receipt of the notification and public report whether the notification
7 and public report are administratively complete. The commissioner either may
8 issue a certification that the notification and public report are
9 administratively complete or may deny issuance of the certification if it
10 appears that the application or project is not in compliance with all legal
11 requirements, that the applicant has a background of violations of state or
12 federal law or that the applicant or project presents an unnecessary risk of
13 harm to the public.

14 5. A subdivider may commence sales or leasing activities as permitted
15 under this article after obtaining a certificate of administrative
16 completeness from the commissioner.

17 6. Before or after the commissioner issues a certificate of
18 administrative completeness, the department may examine any public report,
19 subdivision or applicant that has applied for or received the certificate.
20 If the commissioner determines that the subdivider or subdivision is not in
21 compliance with any requirement of state law or that grounds exist under this
22 chapter to suspend, deny or revoke a public report, the commissioner may
23 commence an administrative action under section 32-2154 or 32-2157. If the
24 subdivider immediately corrects the deficiency and comes into full compliance
25 with state law, the commissioner shall vacate any action that the
26 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

27 7. The department shall provide forms and guidelines for the
28 submission of the notification and public report pursuant to this section.

29 C. The commissioner may suspend, revoke or deny issuance of a public
30 report on any of the following grounds:

31 1. Failure to comply with this article or the rules of the
32 commissioner pertaining to this article.

33 2. The sale or lease would constitute misrepresentation to or deceit
34 or fraud of the purchasers or lessees.

35 3. Inability to deliver title or other interest contracted for.

36 4. Inability to demonstrate that adequate financial or other
37 arrangements acceptable to the commissioner have been made for completion of
38 all streets, sewers, electric, gas and water utilities, drainage and flood
39 control facilities, community and recreational facilities and other
40 improvements included in the offering.

41 5. Failure to make a showing that the lots, parcels or fractional
42 interests can be used for the purpose for which they are offered.

43 6. The owner, agent, subdivider, officer, director or partner,
44 subdivider trust beneficiary holding ten per cent or more direct or indirect

1 beneficial interest or, if a corporation, any stockholder owning ten per cent
2 or more of the stock in the corporation has:

3 (a) Been convicted of a felony or misdemeanor involving fraud or
4 dishonesty or involving conduct of any business or a transaction in real
5 estate, cemetery property, time-share intervals or membership camping
6 campgrounds or contracts.

7 (b) Been permanently or temporarily enjoined by order, judgment or
8 decree from engaging in or continuing any conduct or practice in connection
9 with the sale or purchase of real estate or cemetery property, time-share
10 intervals, membership camping contracts or campgrounds, or securities or
11 involving consumer fraud or the racketeering laws of this state.

12 (c) Had an administrative order entered against him by a real estate
13 regulatory agency or security regulatory agency.

14 (d) Had an adverse decision or judgment entered against him involving
15 fraud or dishonesty or involving the conduct of any business or transaction
16 in real estate, cemetery property, time-share intervals or membership camping
17 campgrounds or contracts.

18 (e) Disregarded or violated this chapter or the rules of the
19 commissioner pertaining to this chapter.

20 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)
21 applies.

22 7. Procurement or an attempt to procure a public report by fraud,
23 misrepresentation or deceit or by filing an application for a public report
24 that is materially false or misleading.

25 8. Failure of the declaration for a condominium created pursuant to
26 title 33, chapter 9, article 2 to comply with the requirements of section
27 33-1215 or failure of the plat for the condominium to comply with the
28 requirements of section 33-1219. The commissioner may require an applicant
29 for a public report to submit a notarized statement signed by the subdivider
30 or an engineer or attorney licensed to practice in this state certifying that
31 the condominium plat and declaration of condominium are in compliance with
32 the requirements of sections 33-1215 and 33-1219. If the notarized statement
33 is provided, the commissioner is entitled to rely on this statement.

34 9. Failure of any blanket encumbrance or valid supplementary agreement
35 executed by the holder of the blanket encumbrance to contain provisions that
36 enable the purchaser to acquire title to a lot or parcel free of the lien of
37 the blanket encumbrance, on completion of all payments and performance of all
38 of the terms and provisions required to be made or performed by the purchaser
39 under the real estate sales contract by which the purchaser has acquired the
40 lot or parcel. The subdivider shall file copies of documents acceptable to
41 the commissioner containing these provisions with the commissioner before the
42 sale of any subdivision lot or parcel subject to a blanket encumbrance.

43 10. Failure to demonstrate permanent access to the subdivision lots or
44 parcels.

45 11. The use of the lots presents an unreasonable health risk.

1 D. It is unlawful for a subdivider to sell any lot in a subdivision
2 unless one of the following occurs:

3 1. All proposed or promised subdivision improvements are completed.

4 2. The completion of all proposed or promised subdivision improvements
5 is assured by financial arrangements acceptable to the commissioner. The
6 financial arrangements may be made in phases for common community and
7 recreation facilities required by a municipality or county as a stipulation
8 for approval of a plan for a master planned community.

9 3. The municipal or county government agrees to prohibit occupancy and
10 the subdivider agrees not to close escrow for lots in the subdivision until
11 all proposed or promised subdivision improvements are completed.

12 4. The municipal or county government enters into an assurance
13 agreement with any trustee not to convey lots until improvements are
14 completed within the portion of the subdivision containing these lots, if the
15 improvements can be used and maintained separately from the improvements
16 required for the entire subdivision plat. The agreement shall be recorded in
17 the county in which the subdivision is located.

18 E. If the subdivision is within a groundwater active management area,
19 as defined in section 45-402, the commissioner shall deny issuance of a
20 public report or the use of any exemption pursuant to section 32-2181.02,
21 subsection B unless the subdivider has been issued a certificate of assured
22 water supply by the director of water resources and has paid all applicable
23 fees pursuant to sections 48-3772 and 48-3774.01, or unless the subdivider
24 has obtained a written commitment of water service for the subdivision from a
25 city, town or private water company designated as having an assured water
26 supply by the director of water resources pursuant to section 45-576 or is
27 exempt from the requirement pursuant to section 45-576.

28 F. A subdivider shall not sell or lease or offer for sale or lease in
29 this state any lots, parcels or fractional interests in a subdivision without
30 first obtaining a public report from the commissioner except as provided in
31 section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of
32 subdivided lands prior to issuance of the public report or failure to deliver
33 the public report to the purchaser or lessee shall render the sale or lease
34 rescindable by the purchaser or lessee. An action by the purchaser or lessee
35 to rescind the transaction shall be brought within three years of the date of
36 execution of the purchase or lease agreement by the purchaser or lessee. In
37 any rescission action, the prevailing party is entitled to reasonable
38 attorney fees as determined by the court.

39 G. Any applicant objecting to the denial of a public report, within
40 thirty days after receipt of the order of denial, may file a written request
41 for a hearing. The commissioner shall hold the hearing within twenty days
42 after receipt of the request for a hearing unless the party requesting the
43 hearing has requested a postponement. If the hearing is not held within
44 twenty days after a request for a hearing is received, plus the period of any
45 postponement, or if a proposed decision is not rendered within forty-five

1 days after submission, the order of denial shall be rescinded and a public
2 report issued.

3 H. On the commissioner's own motion, or when the commissioner has
4 received a complaint and has satisfactory evidence that the subdivider or the
5 subdivider's agent is violating this article or the rules of the commissioner
6 or has engaged in any unlawful practice as defined in section 44-1522 with
7 respect to the sale of subdivided lands or deviated from the provisions of
8 the public report, the commissioner may investigate the subdivision project
9 and examine the books and records of the subdivider. For the purpose of
10 examination, the subdivider shall keep and maintain records of all sales
11 transactions and funds received by the subdivider pursuant to the sales
12 transactions and shall make them accessible to the commissioner upon
13 reasonable notice and demand.

14 I. On the commissioner's own motion, or when the commissioner has
15 received a complaint and has satisfactory evidence that any person has
16 violated this article or the rules of the commissioner or has engaged in any
17 unlawful practice as defined in section 44-1522 with respect to the sale of
18 subdivided lands or deviated from the provisions of the public report or
19 special order of exemption, or has been indicted for fraud or against whom an
20 information for fraud has been filed or has been convicted of a felony,
21 before or after the commissioner issues the public report as provided in
22 subsection A of this section, the commissioner may conduct an investigation
23 of the matter, issue a summary order as provided in section 32-2157, or hold
24 a public hearing and, after the hearing, may issue the order or orders the
25 commissioner deems necessary to protect the public interest and ensure
26 compliance with the law, rules or public report or the commissioner may bring
27 action in any court of competent jurisdiction against the person to enjoin
28 the person from continuing the violation or engaging in or doing any act or
29 acts in furtherance of the violation. The court may make orders or
30 judgments, including the appointment of a receiver, necessary to prevent the
31 use or employment by a person of any unlawful practices, or which may be
32 necessary to restore to any person in interest any monies or property, real
33 or personal, that may have been acquired by means of any practice in this
34 article declared to be unlawful.

35 J. When it appears to the commissioner that a person has engaged in or
36 is engaging in a practice declared to be unlawful by this article and that
37 the person is concealing assets or self or has made arrangements to conceal
38 assets or is about to leave the state, the commissioner may apply to the
39 superior court, ex parte, for an order appointing a receiver of the assets of
40 the person or for a writ of ne exeat, or both.

41 K. The court, on receipt of an application for the appointment of a
42 receiver or for a writ of ne exeat, or both, shall examine the verified
43 application of the commissioner and other evidence that the commissioner may
44 present the court. If satisfied that the interests of the public require the
45 appointment of a receiver or the issuance of a writ of ne exeat without

1 notice, the court shall issue an order appointing the receiver or issue the
2 writ, or both. If the court determines that the interests of the public will
3 not be harmed by the giving of notice, the court shall set a time for a
4 hearing and require notice be given as the court deems satisfactory.

5 L. If the court appoints a receiver without notice, the court shall
6 further direct that a copy of the order appointing a receiver be served on
7 the person engaged in or engaging in a practice declared to be unlawful under
8 this article by delivering the order to the last address of the person that
9 is on file with the state real estate department. The order shall inform the
10 person that the person has the right to request a hearing within ten days of
11 the date of the order and, if requested, the hearing shall be held within
12 thirty days from the date of the order.

13 Sec. 4. Title 32, chapter 20, article 4, Arizona Revised Statutes, is
14 amended by adding section 32-2183.06, to read:

15 32-2183.06. Restricted air space disclosure; residential
16 property

17 A. ANY PUBLIC REPORT THAT IS ISSUED AFTER DECEMBER 31, 2006 PURSUANT
18 TO SECTION 32-2183 OR 32-2195.03 AND THAT IS APPLICABLE TO PROPERTY LOCATED
19 UNDER RESTRICTED AIR SPACE, AS DELINEATED IN THE RESTRICTED AIR SPACE MAP
20 PREPARED BY THE STATE LAND DEPARTMENT PURSUANT TO SECTION 37-102, SHALL
21 INCLUDE THE FOLLOWING STATEMENTS:

22 1. THE PROPERTY IS LOCATED UNDER RESTRICTED AIR SPACE.

23 2. THE STATE LAND DEPARTMENT AND THE STATE REAL ESTATE DEPARTMENT
24 MAINTAIN RESTRICTED AIR SPACE MAPS AVAILABLE TO THE PUBLIC.

25 3. THE RESTRICTED AIR SPACE MAP IS POSTED ON THE STATE REAL ESTATE
26 DEPARTMENT'S WEB SITE.

27 B. THE PUBLIC REPORT PRESCRIBED BY SUBSECTION A OF THIS SECTION MAY
28 CONTAIN A DISCLAIMER THAT THE SUBDIVIDER HAS NO CONTROL OVER THE RESTRICTED
29 AIR SPACE AS DELINEATED IN THE RESTRICTED AIR SPACE MAP OR THE TIMING OR
30 FREQUENCY OF FLIGHTS AND ASSOCIATED LEVELS OF NOISE.

31 C. FOR ANY LOT RESERVATION OR CONDITIONAL SALE THAT OCCURS BEFORE THE
32 ISSUANCE OF A PUBLIC REPORT, THE DISCLOSURE STATEMENTS LISTED IN SUBSECTION A
33 OF THIS SECTION SHALL BE INCLUDED WITHIN THE RESERVATION DOCUMENT OR
34 CONDITIONAL SALES CONTRACT.

35 D. THIS SECTION DOES NOT REQUIRE THE AMENDMENT OR REISSUANCE OF ANY
36 PUBLIC REPORT ISSUED ON OR BEFORE DECEMBER 31, 2006 OR THE AMENDMENT OR
37 REISSUANCE OF ANY RESERVATION DOCUMENT OR CONDITIONAL SALES CONTRACT ACCEPTED
38 ON OR BEFORE DECEMBER 31, 2006.

39 E. NOTWITHSTANDING ANY OTHER LAW, IF THE PUBLIC REPORT COMPLIES WITH
40 SUBSECTION A OF THIS SECTION, A SUBDIVIDER IS NOT LIABLE TO ANY PERSON OR
41 GOVERNMENTAL ENTITY FOR ANY ACT OR FAILURE TO ACT IN THE DISCLOSURE OF
42 RESTRICTED AIR SPACE AS DELINEATED IN THE RESTRICTED AIR SPACE MAP.

~~APPROVED BY THE GOVERNOR APRIL 12, 2006.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2006.~~